

REMARKS / DISCUSSION OF ISSUES

Claims 1-28 are pending in the application.

Each of the independent claims is amended to include preparing a first response at the target node prior to receiving any part of a query from the source node; support for this limitation is found at least at page 4, line 28 – page 5, line 1 of the applicants' specification.

Each of the independent claims is also amended to restore the claims to refer to processing the query, rather than decrypting the query. In the applicants' prior amendment, the term 'processing' was replaced with 'decrypting', in an attempt to further distinguish the invention from the prior art. Because the Examiner has determined that the proffered change does not affect the patentability of the claims, the applicants herein withdraw that change, and recant all remarks related to that change.

The Examiner rejects claims 1-28 on the ground of non-statutory obviousness-type double patenting over claims 1-21 of copending application 10/529,778 filed by Epstein et al. (hereinafter Epstein). The applicants respectfully traverse this rejection in view of amended independent claims 1, 11, and 18.

Epstein teaches and claims processing a received query, determining a time required for this processing, and then including this time in a message that is sent in response to the query. The applicants teach and claim having a response prepared before receiving the query, so that there is no significant time required to process the query and transmit the prepared response. Because Epstein includes the time required to process the query in the response to the query, Epstein cannot be said to teach or suggest having a previously created response that is sent in response to the query, as claimed by the applicants.

Because Epstein does not teach or suggest preparing a first response at the target node prior to receiving a query from the source node, as claimed in each of the applicants' independent claims, the applicants respectfully request the Examiner's reconsideration of the rejection of claims 1-28 on the ground of non-statutory obviousness-type double patenting over claims 1-21 of Epstein.

The Examiner rejects claims 1-7 and 11-25 under 35 U.S.C. 102(e) over Lundkvist (USPA 2003/0184431). The applicants respectfully traverse this rejection.

MPEP 2131 states:

"A claim is anticipated only if *each and every element* as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)... "The *identical invention* must be shown in as *complete detail* as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Lundkvist fails to teach communicating a first response from the target node to the source node, immediately after the query is received and before the query is decrypted at the target node, as claimed in each of the applicants' independent claims. Lundkvist also fails to teach preparing the first response at the target node prior to receiving the query from the source node, as claimed in each of the amended independent claims.

The Board of Patent Appeals and Interferences has consistently upheld the principle that the burden of establishing a prima facie case resides with the Office, and to meet this burden, the Examiner must specifically identify where each of the claimed elements is found in the prior art:

"there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. Scripps Clinic & Research Found. v. Genentech, Inc., 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991). To meet [the] burden of establishing a prima facie case of anticipation, the examiner must explain how the rejected claims are anticipated by pointing out where *all* of the specific limitations recited in the rejected claims are found in the prior art relied upon in the rejection." *Ex Parte Naoya Isoda*, Appeal No. 2005-2289, Application 10/064,508 (BPAI Opinion October 2005).

In each of Lundkvist's FIGs. 3, 4, and 5, Lundkvist specifically teaches that the response message Z is determined **after** the query message X is received. In response to the applicants' prior remarks, the Examiner asserts that:

"It will also defeat the purpose Lundkvist's invention (determining proximity) if the 'X' query is first decrypted or processed (and a value from the signal used in the generation and transmission of 'Z') before the first signal 'Z' is transmitted because proximity determination entails sending a query and receiving a response immediately to measure the elapsed time and determine the proximity of the object."

This assertion is incorrect. Processing X before determining and transmitting Z will result in a less accurate determination of proximity than the applicants' invention; it will not "defeat the purpose of Lundkvist's invention".

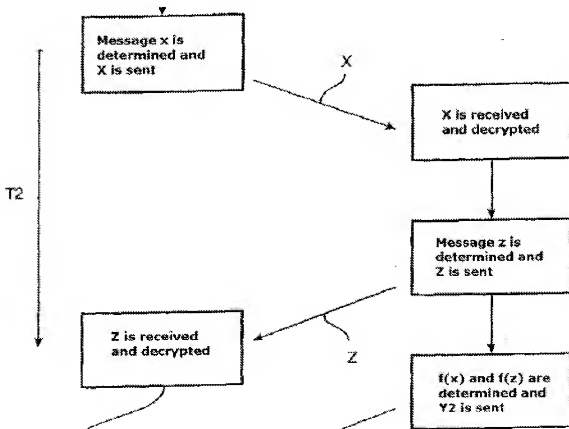
The applicants respectfully maintain that the recognition that a more accurate determination of proximity can be obtained by having a pre-prepared response Z ready, and transmitting it immediately upon receipt of the query X, comes solely from the applicants' disclosure. The fact that each of Lundkvist's FIGs. 3-5 specifically shows that the response Z is determined after receiving the prompt X argues strongly against that Examiner's assertion that the purpose of Lundkvist's invention would be defeated if one were to build the invention as taught by Lundkvist.

Lundkvist does not teach that the response Z is prepared prior to receiving the query X, and that the response Z is transmitted before the query X is decrypted. In this rejection, the Examiner asserts that Lundkvist discloses that the response Z is transmitted before the query X is decrypted at paragraph 34. This assertion is incorrect. At the cited text, Lundkvist states:

"[0034] According to this second embodiment, two second signals Z, Y2, are sent from the portable unit 2 to the object 1 in response to the signal X. A first Z of these second encrypted signals comprises second verification information z. The control unit 70 creates namely a message that consists of identity information E\_ID that is unique to the unit 2 and a random number E\_RND. The second signal Y2 that is last in time comprises a first part f(x), as described above, and a second part f(z). In particular, f(z) comprises the message part E\_VER=f(E\_RND). A time T2 is measured by the control unit 7 of the object 1 from the transmission of the first signal X until the reception of the first in time Z of the second signals. When Y2 has been received and

decrypted,  $f(x)$  ( $=E\_SVAR$ ),  $f(z)$  ( $=E\_VER$ ) and  $T2$  are checked, after which the lock 11 is unlocked if  $E\_SVAR=f(O\_RND)$ ,  $E\_VER=f(E\_RND)$  and the measured time is less than a predetermined value."

As is clearly evident, the cited text is silent with regard to the processing of the query  $X$  before or after the response  $Z$  is transmitted, and as noted above, FIG. 3, to which this paragraph refers, specifically shows a sequential process, wherein the query " $X$  is received and decrypted", is followed by "Message  $z$  is determined and  $Z$  is sent", as shown below:



Because Lundkvist fails to teach each of the elements of the applicants' claims, and because the Examiner's characterization of Lundkvist is contrary to Lundkvist's flow diagrams, the applicants respectfully maintain that the rejection of claims 1-7 and 11-25 under 35 U.S.C. 102(e) over Lundkvist is unfounded, and should be withdrawn.

The Examiner rejects claims 8-10 and 26-28 under 35 U.S.C. 103(a) over Lundkvist and Davis et al. (USP 6,088,450, hereinafter Davis).

Claims 2-10, 12-17, and 19-28 depend from claims 1, 11, and 18, respectively, and inherit all of the respective features of claims 1, 11, and 18. Thus, claims 2-10, 12-17, and 19-28 are patentable for at least the same reasons discussed above with respect to each independent claim, from which they depend, with each dependent claim containing further distinguishing patentable features.

Withdrawal of the rejections of dependent claims 8-10 and 26-28 under 35 U.S.C. §103(a) and early allowance are respectfully requested.

In view of the foregoing, the applicants respectfully request that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application to be in condition for allowance. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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